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No. 486

In the Supreme Court of the United States

OCTOBER TERM, 1947

TIGHE E. WOODS, ACTING HOUSING EXPEDITER OF THE OFFICE OF HOUSING EXPEDITER, APPELLANT

v.

THE CLOYD W. MILLER COMPANY, A CORPORATION, AND CLOYD W. MILLER

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OHIO

STATEMENT AS TO JURISDICTION

In the District Court of the United States for the Northern District of Ohio, Eastern Division

CIVIL No. 25073

TIGHE E. WOODS, ACTING HOUSING EXPEDITER OF THE OFFICE OF HOUSING EXPEDITER, APPELLANT

v.

THE CLOYD W. MILLER COMPANY, A CORPORATION, AND CLOYD W. MILLER

STATEMENT AS TO JURISDICTION

In compliance with Rule 12 of the Supreme Court of the United States, as amended, the plaintiff herein submits his statement particularly disclosing the basis upon which the Supreme Court has jurisdiction on appeal to review the decision of the District Court entered in this cause December 1, 1947. A petition for appeal is presented to the District Court herewith, to wit, on December —, 1947.

JURISDICTION

The jurisdiction of the Supreme Court to review by direct appeal the judgment entered in this case is conferred by Section 2 of the Act of August 24, 1937, 50 Stat. 752, 28 U. S. C. 349 (a).

The following decisions sustain the jurisdiction of the Supreme Court to review the judgment on direct appeal in this case:

Bowles v. *Willingham,* 321 U. S. 503.
U. S. 533.
Bowles v. *Willingham,* 321 U. S. 503.

STATUTE AND REGULATION INVOLVED

1. The pertinent portions of the Housing and Rent Act of 1947, Pub. L. 129, 80th Cong., 1st sess., and of the Controlled Housing Rent Regulation 12 F. R. 4331, are set out verbatim in Appendix A to this statement.

The Housing and Rent Act of 1947 was enacted on June 30, 1947, and became effective July 1, 1947. Title II of the Act (the only part involved in this case) provided for the maintenance of rent control in those areas which were under control pursuant to the Emergency Price Control Act on March 1, 1947 (Section 202 (d)). The Act fixed maximum rents in such areas as those in effect under the Emergency Price Control Act on June 30, 1947, and forbade the demand for or receipt of rents in excess thereof (Section 204 (b)). The Housing Expediter is authorized to make adjustments in maximum rents and, in addition, rent increases of up to 15% by written lease between the landlord and tenant were authorized (Section 204 (b)). The Housing Expediter is authorized to remove controls in any defense rental area if the need for such controls no longer exists due to sufficient construction of

new housing accommodations or when the demand for rental housing accommodations has otherwise reasonably been met (Section 204 (c)).

The Controlled Housing Rent Regulation, issued pursuant to the Act and effective July 1, 1947, similarly fixes the maximum rent for housing accommodations under its control as that in effect on June 30, 1947 (Section 4 (a)), and provides that no person shall demand or receive rent in excess thereof (Section 2 (a)).

THE ISSUES AND RULING BELOW

The complaint in this action was filed in the United States District Court for the Northern District of Ohio on July 10, 1947, and alleged that the defendants were the landlords of certain housing accommodations within the Cleveland Defense Rental Area, subject to the Housing and Rent Act and the Controlled Housing Rent Regulation.[1] It further alleged that the defendants had demanded from the tenants rent in excess of the legal maximum rents. It prayed for a preliminary and final injunction restraining the defendants from demanding or receiving more than the maximum rents.

By a stipulation of facts, the parties agreed that the defendants were the landlords of housing

[1] Section 1 (a) of the Regulation provides that the areas listed in Schedule A of the Regulation are subject thereto. Cleveland, Ohio, is listed in Schedule A, which notes that it was placed under rent control in 1942.

accommodations within the Cleveland Defense Rental Area, and that they had demanded over-ceiling rents from all of their tenants. On July 21, 1947, the District Court, finding that the facts were as stated above and that the defendants had violated the Housing and Rent Act of 1947, granted a preliminary injunction restraining the defendants from demanding or receiving any rent in excess of the maximum rent allowed. On August 27, 1947, defendants filed an answer which admitted the factual allegations in the complaint and raised as a defense that the Housing and Rent Act of 1947 was unconstitutional.

On November 20, 1947, the District Court issued its opinion [2] on the merits of the action holding that Title II of the Housing and Rent Act of 1947 was unconstitutional because:

1. With the termination of hostilities as proclaimed by the President on December 31, 1946, Congress could no longer exercise its war powers to control rents.

2. The Act made an unconstitutional delegation of power to the Housing Expediter in that it authorizes him to remove controls in any defense rental area if, in his judgment, the need for continuing maximum rents no longer exists.

On December 1, 1947, judgment was entered dissolving the preliminary injunction and dismissing the complaint.

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[2] The opinion of the District Court is set out in Appendix B to this statement.

THE QUESTIONS ARE SUBSTANTIAL

1. The Federal regulation of rents for housing accommodations commenced under the Emergency Price Control Act of 1942, as amended, as an exercise of the war powers of Congress. *Bowles* v. *Willingham*, 321 U. S. 503; *Taylor* v. *Brown*, 137 F. 2d 654 (E. C. A.) certiorari denied 320 U. S. 787. On December 31, 1946, the President proclaimed the termination of hostilities (12 F. R. 1). The United States has not yet entered into peace treaties with either Germany or Japan, and neither the President nor Congress has acted to end the state of war with those countries.[3] The District Court's decision that the Housing and Rent Act of 1947 is unconstitutional in that upon the termination of hostilities Congress no longer possesses the power to control rents, is in direct conflict with decisions of other district courts. In *Creedon* v. *Stratton*, D. Neb., No. 187, decided October 6, 1947, and in *Granberry* v. *Creedon*, D. Colo., No. 2266, decided September 11, 1947, the contention was rejected that the war emergency

[3] On July 25, 1947, the President approved S. J. Res. 123 which terminated certain war statutes. At that time, the President issued a statement in which he declared that "The emergencies declared by the President on September 8, 1939, and May 27, 1941, and the state of war continue to exist, however, and it is not possible at this time to provide for terminating all war and emergency powers."

had terminated and that therefore the Act was unconstitutional.[4]

The decision below likewise conflicts with decisions of the Supreme Court which hold that the war power does not end with the cessation of hostilities, but includes the power to remedy the evils which have arisen from it. This doctrine was aptly stated at the last term in *Fleming* v. *Mohawk Wrecking and Lumber Co.*, 331 U. S. 111. In that case, which involved the Emergency Price Control Act, the Court declared (p. 116):

> On December 31, 1946, after the creation of the Office of Temporary Controls, the President, while recognizing that "a state of war still exists," by proclamation declared that hostilities had terminated (Proclamation 2714, 50 U. S. C. A. Appendix, § 601 note, 12 Fed. Reg. 1). The cessation of hostilities does not necessarily end the war power. It was stated in *Hamilton* v. *Kentucky Distilleries & W. Co.*, 251 U. S. 146, 161, 40 S. Ct. 106, 110, 64 L. Ed. 194, that the war power includes the power "to remedy the evils which have arisen from its rise and progress" and continues during that emergency. *Stewart* v. *Kahn*, 11 Wall. 493, 507, 20 L. Ed. 176.

Steward v. *Kahn* and the *Kentucky Distilleries* case, cited in the above quotation, and *Ruppert* v. *Caffey*, 251 U. S. 264 are also closely in point.

[4] In *Lewis* v. *Anderson*, 72 F. S. 119 (S. D. Cal.), decided June 9, 1947, Judge Yankwich sustained the constitutionality of the Sugar Control Extension Act of 1947 as an exercise of the war emergency powers.

2. The District Court also concluded that Congress, in enacting the Housing and Rent Act of 1947, had not even purported to act under the war power because "The Act is not by any express words or implied provisions tied up with any war powers of the Congress." But there is no requirement that Congress specify under which of its constitutional powers it is acting when it legislates. Most of the statutes enacted by Congress contain no declaration of policy, much less a statement of the constitutional powers under which they are enacted.[5] In the instant case, the issue is whether the statute can be sustained under the war powers, not whether Congress recited that it was acting under that power. In any event, Congress clearly indicated that it regarded Title II of the Housing and Rent Act of 1947 as an exercise of the war power. See Section 201 of the Act; Cong. Rec. May 1st, 1947, p. 4520; H. R. 317, 80 Cong. Rec., 1st sess., p. 2. That a serious housing shortage exists as a result of the war is too well known to require demonstration at this time.

3. The District Court held that the Housing and Rent Act of 1947 was further invalid in that it "lacks in uniformity of application and distinctly constitutes a delegation of legislative power not within the grant of Congress." The District

[5] For example, of the first 100 statutes enacted by the 2d session of the 79th Congress, 90 contain no statement of policy whatsoever.

Court based this conclusion upon the provision of Section 204 (c) of the Act that "the Housing Expediter is hereby authorized and directed to remove any and all maximum rents before this title ceases to be in effect, in any defense-rental area, if in his judgment the need for continuing maximum rents in such area no longer exists due to sufficient construction of new housing accommodations or when the demand for rental housing accommodations has been otherwise reasonably met". We think it clear, however, that this section contains an adequate standard for administrative action. See *Bowles* v. *Willingham*, 321 U. S. 503; *Yakus* v. *United States*, 321 U. S. 414; *Opp Cotton Mills* v. *Administrator*, 312 U. S. 126, 145–146, and cases cited; *Fahey* v. *Mallonee*, 332 U. S. 245.

4. The issue is an extremely important one. Some 16,000,000 housing accommodations are presently under rent control, and the tenants will be left without protection, both with regard to the rent they would have to pay and with regard to eviction from their dwellings, if the present decision should stand. Moreover, grave doubt would be cast upon the validity of any price-control or rationing statutes which Congress might enact to cope with the continuing war-born inflation.

Respectfully submitted.

(S) Philip B. Perlman,
PHILIP B. PERLMAN,
Solicitor General.

In the District Court of the United States for the Northern District of Ohio Eastern Division

Civil Action, File No. 25073

TIGHE E. WOODS, ACTING HOUSING EXPEDITER, OFFICE OF THE HOUSING EXPEDITER, PLAINTIFF

v.

THE CLOYD W. MILLER COMPANY, A CORPORATION, CLOYD W. MILLER, DEFENDANTS

DEFENDANTS' AGREEMENT OF JURISDICTION OF THE SUPREME COURT ON APPEAL

Filed Dec. 17, 1947, 3:06 P. M. C. B. Watkins, Clerk. U. S. District Court NDO.

Defendants through counsel hereby agree that the Supreme Court of the United States has jurisdiction of the appeal of this case under Title 28 U. S. C. A. Section 349 (a) (Section 2 of the Act of August 24, 1937), because the District Court has held Title II of the Housing and Rent Act of 1947 unconstitutional.

(S) Paul S. Knight,
PAUL S. KNIGHT,
Attorney for Defendants.

APPENDIX

TITLE II—MAXIMUM RENTS

DECLARATION OF POLICY

SEC. 201. (a) The Congress hereby reaffirms the declaration in the Price Control Extension Act of 1946 that unnecessary or unduly prolonged controls over rents would be inconsistent with the return to a peacetime economy and would tend to prevent the attainment of the goals therein declared.

(b) The Congress therefore declares that it is its purpose to terminate at the earliest practicable date all Federal restrictions on rents on housing accommodations. At the same time the Congress recognizes that an emergency exists and that, for the prevention of inflation and for the achievement of a reasonable stability in the general level of rents during the transition period, as well as the attainment of other salutary objectives of the above-named Act, it is necessary for a limited time to impose certain restrictions upon rents charged for rental housing accommodations in defense-rental areas. Such restrictions should be administered with a view to prompt adjustments where owners of rental housing accommodations are suffering hardships because of the inadequacies of the maximum rents applicable to their housing accommodations, and under procedures designed to minimize delay in the granting of

necessary adjustments, which, so far as practicable, shall be made by local boards with a minimum of control by any central agency.

(c) To the end that these policies may be effectively carried out with the least possible impact on the economy pending complete decontrol, the provisions of this title are enacted.

DEFINITIONS

SEC. 202. As used in this title—

(a) The term "person" includes an individual, corporation, partnership, association, or any other organized group of persons, or a legal successor or representative of any of the foregoing.

(b) The term "housing accommodations" means any building, structure, or part thereof, or land appurtenant thereto, or any other real or personal property rented or offered for rent for living or dwelling purposes (including houses, apartments, rooming- or boarding-house accommodations, and other properties used for living or dwelling purposes) together with all privileges, services, furnishings, furniture, and facilities connected with the use or occupancy of such property.

(c) The term "controlled housing accommodations" means housing accommodations in any defense-rental area, except that it does not include—

(1) those housing accommodations, in any establishment which is commonly known as a hotel in the community in which it is located, which are occupied by persons who are provided customary hotel services such as maid service, furnishing and laundering of linen, telephone and

secretarial or desk service, use and upkeep of furniture and fixtures, and bellboy service; or

(2) any motor court, or any part thereof; or any tourist home serving transient guests exclusively, or any part thereof; or

(3) any housing accommodations (A) the construction of which was completed on or after February 1, 1947, or which are additional housing accommodations created by conversion on or after February 1, 1947, except that contracts for the rental of housing accommodations to veterans of World War II and their immediate families, the construction of which was assisted by allocations or priorities under Public Law 388, Seventy-ninth Congress, approved May 22, 1946, shall remain in full force and effect, or (B) which at no time during the period February 1, 1945, to January 31, 1947, both dates inclusive, were rented (other than to members of the immediate family of the occupant) as housing accommodations.

(d) The term "defense-rental area" means any part of any area designated under the provisions of the Emergency Price Control Act of 1942, as amended, prior to March 1, 1947, as an area where defense activities have resulted or threaten to result in an increase in the rents for housing accommodations inconsistent with the purposes of such Act, in which maximum rents were being regulated under such Act on March 1, 1947.

(e) The term "rent" means the consideration demanded or received in connection with the use or occupancy or the transfer of a lease of any housing accommodations.

TERMINATION OF RENT CONTROL UNDER EMERGENCY PRICE CONTROL ACT OF 1942.

SEC. 203. (a) After the effective date of this title, no maximum rents shall be established or maintained under the authority of the Emergency Price Control Act of 1942, as amended, with respect to any housing accommodations.

(b) On the termination of rent control under this title all records and other data used or held in connection with the establishment and maintenance of maximum rents by the Housing Expediter, and all predecessor agencies, shall, on request, be delivered without reimbursement to the proper officials of any State or local subdivision of government that may be charged with the duty of administering a rent-control program in any State or local subdivision of government to which such records and data may be applicable: *Provided, however,* That any such records or data shall be so made available subject to recall for use in carrying out the purposes of this title.

RENT CONTROL UNDER THIS TITLE

SEC. 204. (a) The Housing Expediter shall administer the powers, functions, and duties under this title; and for the purpose of exercising such powers, functions, and duties, and the powers, functions, and duties granted to or imposed upon the Housing Expediter by title I of this Act, the Office of Housing Expediter is hereby extended until February 29, 1948.

(b) During the period beginning on the effective date of this title and ending on the date this

title ceases to be in effect, no person shall demand, accept, or receive any rent for the use or occupancy of any controlled housing accommodations greater than the maximum rent established under the authority of the Emergency Price Control Act of 1942, as amended, and in effect with respect thereto on June 30, 1947: *Provided, however,* That the Housing Expediter shall, by regulation or order make such adjustments in such maximum rents as may be necessary to correct inequities or further to carry out the purposes and provisions of this title: *And provided further,* That in any case in which a landlord and tenant, on or before December 31, 1947, voluntarily enter into a valid written lease in good faith with respect to any housing accommodations for which a maximum rent is in effect under this section and such lease takes effect after the effective date of this title and expires on or after December 31, 1948, and if a true and duly executed copy of such lease is filed, within fifteen days after the date of execution of such lease, with the Housing Expediter, the maximum rent for such housing accommodations shall be, as of the date such lease takes effect, that which is mutually agreed between the landlord and tenant in such lease if it does not represent an increase of more than 15 per centum over the maximum rent which would otherwise apply under this section. In any case in which a maximum rent for any housing accommodations is established pursuant to the provisions of the last proviso above, such maximum rent shall not thereafter be subject to modification by any regulation or order issued under the provisions of this title. No housing accommodations

for which a maximum rent is established pursuant to the provisions of the last proviso above shall be subject, after December 31, 1947, to any maximum rent established or maintained under the provisions of this title.

(c) The Housing Expediter is hereby authorized and directed to remove any or all maximum rents before this title ceases to be in effect, in any defense-renfal area, if in his judgment the need for continuing maximum rents in such area no longer exists due to sufficient construction of new housing accommodations or when the demand for rental housing accommodations has been otherwise reasonably met.

(d) The Housing Expediter is authorized to issue such regulations and orders, consistent with the provisions of this title, as he may deem necessary to carry out the provisions of this section and section 202 (c).

(e) (1) The Housing Expediter is authorized and directed to create in each defense-rental area, or such portion thereof as he may designate, a local advisory board, each such board to consist of not less than five members who are representative citizens of the area, to be appointed by the Housing Expediter, from recommendations made by the respective Governors. Each such board shall have sufficient members to enable it promptly to consider individual adjustment cases coming before it on which the board shall make recommendations to the officials administering this title within its area. The local boards may make such recommendations to the Housing Expediter as they deem advisable with respect to the following matters:

(A) Decontrol of the defense-rental area or any portion thereof;

(B) The adequacy of the general rent level in the area; and

(C) Operations generally of the local rent office, with particular reference to hardship cases.

(2) The Housing Expediter shall furnish the local boards suitable office space and stenographic assistance and shall make available to such boards any records and other information in the possession of the Housing Expediter with respect to the establishment and maintenance of maximum rents and housing accommodations in the respective defense-rental areas which may be requested by such boards.

(3) Within thirty days after receipt of any recommendation of a local board such recommendation shall be approved or disapproved or the local board shall be notified in writing of the reasons why final action cannot be taken in thirty days. Any recommendation of a local board appropriately substantiated and in accordance with applicable law and regulations shall be approved and appropri te action shall promptly be taken to carry such recommendation into effect.

(4) Immediately upon the enactment of this Act the Housing Expediter shall communicate with the governors of the several States advising them of the provisions of this subsection and of the number and location of defense-rental areas in their respective States, and requesting their cooperation in carryi g out such provisions.

(f) The provisions of this title shall cease to be in effect on February 29, 1948.

RECOVERY OF DAMAGES BY TENANTS

SEC. 205. Any person who demands, accepts, or receives any payment of rent in excess of the maximum rent prescribed under section 204 shall be liable to the person from whom he demands, accepts, or receives such payment, for reasonable attorney's fees and costs as determined by the court, plus liquidated damages in the amount of (1) $50, or (2) three times the amount by which the payment or payments demanded, accepted, or received exceed the maximum rent which could lawfully be demanded, accepted, or received, whichever in either case may be the greater amount: *Provided,* That the amount of such liquidated damages shall be the amount of the overcharge or overcharges if the defendant proves that the violation was neither willful nor the result of failure to take practicable precautions against the occurrence of the violation. Suit to recover such amount may be brought in any Federal, State, or Territorial court of competent jurisdiction within one year after the date of such violation. For the purpose of determining the amount of liquidated damages to be awarded to the plaintiff in an action brought under this section, all violations alleged in such action which were committed by the defendant with respect to the plaintiff prior to the bringing of action shall be deemed to constitute one violation, and the amount demanded, accepted, or received in connection with such one violation shall be deemed to be the aggregate amount demanded, accepted, or received in connection with all violations. A judgment in an action under this section shall be

a bar to a recovery under this section in any other action against the same defendant on account of any violation with respect to the same plaintiff prior to the institution of the action in which such judgment was rendered.

PROHIBITION AND ENFORCEMENT

SEC. 206. (a) It shall be unlawful for any person to offer, solicit, demand, accept, or receive any rent for the use or occupancy of any controlled housing accommodations in excess of the maximum rent prescribed under section 204.

(b) Whenever in the judgment of the Housing Expediter any person has engaged or is about to engage in any act or practice which constitutes or will constitute a violation of subsection (a) of this section, he may make application to any Federal, State or Territorial court of competent jurisdiction, for an order enjoining such act or practice, or for an order enforcing compliance with such subsection, and upon a showing by the Housing Expediter that such person has engaged or is about to engage in any such act or practice a permanent or temporary injunction, restraining order, or other order shall be granted without bond.

MAINTENANCE OF ACTIONS FOR CERTAIN ALLEGED PAST VIOLATIONS

SEC. 207. No action or proceeding, involving any alleged violation of Maximum Price Regulation Numbered 188, issued under the Emergency Price Control Act of 1942, as amended, shall be maintained in any court, or judgment thereon executed or otherwise proceeded on, if a court of competent jurisdiction has found, or by opinion

has declared, that the person alleged to have committed such violation acted in good faith and that application to such person of the "actual delivery" provisions of such regulation would result or has resulted in extreme hardship.

PROPERTY, PERSONNEL, AND APPROPRIATIONS

SEC. 208. (a) The records, property, personnel, and funds, relating primarily to rent control, transferred to the Housing Expediter by or pursuant to Executive Order Numbered 9841, dated April 23, 1947, may be used for the purpose of carrying out the powers, functions, and duties of the Housing Expediter under this title; except that any personnel so transferred who are found to be in excess of the needs of the Housing Expediter for the exercise of such powers, functions, and duties shall be separated from the service.

(b) There are authorized to be appropriated to the Housing Expediter such sums as may be necessary to carry out the provisions of this Act.

EVICTION OF TENANTS

SEC. 209. (a) No action or proceeding to recover possession of any controlled housing accommodations with respect to which a maximum rent is in effect under this title shall be maintainable by any landlord against any tenant in any court, notwithstanding the fact that the tenant has no lease or that his lease has expired, so long as the tenant continues to pay the rent to which the landlord is entitled unless—

(1) under the law of the State in which the action or proceeding is brought the tenant is (A) violating the obligation of his tenancy (other than

an obligation to pay rent higher than rent permitted under this Act or an obligation to surrender possession of such housing accommodations) or (B) is committing a nuisance in such housing accommodations or using such housing accommodations for an immoral or illegal purpose or for other than living or dwelling purposes;

(2) the landlord seeks in good faith to recover possession of such housing accommodations for his immediate and personal use and occupancy as housing accommodations;

(3) the landlord has in good faith contracted in writing to sell the housing accommodations to a purchaser for the immediate and personal use and occupancy as housing accommodations by such purchaser;

(4) the landlord seeks in good faith to recover possession of such housing accommodations for the immediate purpose of substantially altering, remodeling, or demolishing them and replacing them with new construction, and the altering or remodeling is reasonably necessary to protect and conserve the housing accommodations and cannot practically be done with the tenant in occupancy, and the landlord has obtained such approval as may be required by Federal, State, or local law for the alterations, remodeling, or any construction planned; or

(5) the housing accommodations are nonhousekeeping, furnished housing accommodations, located within a single dwelling unit not used as a rooming or boarding house and the remaining portion of which is occupied by the landlord or his immediate family.

(b) Notwithstanding any other provision of this Act, the United States or any State or local public agency may maintain an action or proceeding to recover possession of any housing accommodations operated by it where such action or proceeding is authorized by the statute or regulations under which such accommodations are administered: *Provided,* That nothing in this subsection shall be deemed to authorize the maintenance of any such action or proceeding upon the ground that the income of the occupants of the housing accommodations exceeds the allowable maximum unless such income, less any amounts paid to such occupants by the Veterans' Administration on account of service-connected disability or disabilities, exceeds the allowable maximum.

ADMINISTRATIVE PROCEDURE ACT INAPPLICABLE

SEC. 210. Section 2 (a) of the Administrative Procedure Act, as amended, is amended by inserting after "Selective Training and Service Act of 1940;" the following: "Housing and Rent Act of 1947;".

APPLICATION

SEC. 211. The provisions of this title shall be applicable to the several States and to the Territories and possessions of the United States but shall not be applicable to the District of Columbia.

EFFECTIVE DATE OF TITLE

SEC. 212. This title shall become effective on the first day of the first calendar month following the month in which this Act is enacted.

SHORT TITLE

SEC. 213. This Act may be cited as the "Housing and Rent Act of 1947".

2. The pertinent portions of the controlled Housing Rent Regulation, 12 F. R. 4331, provide as follows:

> SEC. 2. (a). *General prohibition.*—Regardless of any contract, agreement, lease, or other obligation heretofore or hereafter entered into, no person shall offer, demand, or receive any rent for or in connection with the use or occupancy on and after the effective date of this regulation of any housing accommodations within the Defense-Rental Area higher than the maximum rents provided by this regulation; and no person shall offer, solicit, attempt, or agree to do any of the foregoing. A reduction in the minimum space, services, furniture, furnishings, or equipment required under section 3 of this regulation shall constitute an acceptance of rent higher than the maximum rent. Lower rents than those provided by this regulation may be demanded or received.
>
> SEC. 4. (a). *Maximum rents in effect on June 30, 1947.*—The maximum rent for any housing accommodation under this regulation (unless and until changed by the Expediter as provided in section 5) shall be the maximum rent which was in effect on June 30, 1947, as established under the Emergency Price Control Act of 1942, as amended, and the applicable rent regulation issued thereunder, except as otherwise provided in this section.

APPENDIX B

In the District Court of the United States for the Northern District of Ohio, Eastern Division

Civil No. 25073

FRANK R. CREEDON, HOUSING EXPEDITER,
PLAINTIFF

v.

THE CLOYD W. MILLER COMPANY, A CORPORATION, CLOYD W. MILLER, DEFENDANTS

JONES, *J:* In this action the Housing and Rent Act of 1947 has been challenged as unconstitutional because it undertakes to fix and regulate local rentals and interferes with local affairs and rights not subject to congressional power. The defendants, against whom a permanent injunction is sought, announced to their tenants that on August 1, 1947, the rentals in suites of the defendants' apartments in the City of Cleveland, Ohio, would be increased by percentages or sums and methods contrary to the express provision of the Housing Act of 1947 and regulations authorized thereunder.

A preliminary injunction was granted on July 21, 1947, without contest and without a hearing on the questions now raised by the answer of the defendants, posing the constitutional question. The matter, therefore, is before me for final determination on the pleadings there being no fac-

tual controversy. See Stipulation dated July 21, 1947.

The Housing and Rent Act of 1947 consists of two titles: Title 1 deals with amendments concerning housing loans, priorities, etc.; Title 2 sets forth the policy of and authority for the control of rents and evictions by the Housing Expediter.

In Section 201 of Title 2, Congress reaffirms the declaration in the Price Control Extension Act of 1946 concerning the undesirability of unduly prolonged controls in peacetime. However, "Congress recognizes that an emergency exists" and that further controls are desirable.

Under Sections 201 and 202 of Title 2, it is not possible for the Housing Expediter to extend rent control to any area which had not been designated a "defense rent area" prior to March 1, 1947, and in which rents were not regulated under the Emergency Price Control Act of March 1, 1947.

Section 203 (a) provides:

> After the effective date of this title, no maximum rents shall be established or maintained under the authority of the Emergency Price Control Act of 1942, as amended, with respect to any housing accommodations.

Under Section 204 (c) the Housing Expediter is authorized and directed to remove any or all maximum rents before this Title ceases to be in effect if, in his judgment, the need for such controls no longer exists. The remainder of Title 2 consists of enforcement and eviction provisions.

Section 206 (b) authorizes the Housing Ex-

pediter to apply for an injunction whenever in his judgment any person has engaged or is about to engage in an act in violation of sub-section (a) of Section 206 which prohibits the demand or receipt of rent in excess of the prescribed maximum rent.

The power of Congress to enact legislative measures is not lightly to be questioned. Only if some substantial constitutional right of the citizen has been infringed or impaired should the courts strike down an act of the Congress. What the court thinks about the law is of no consequence if the congressional measure does not infringe the constitutional rights of the defendants.

It is contended that the continuance of rent regulation stems from the war powers earlier exercised by the Congress and that there has not yet been any official termination of the war; but the President's proclamation of the termination of hostilities was issued on December 31, 1946, and although this may not have been an official termination of the war, nevertheless it inaugurated peace in fact.

In the absence of any words or provisions to that effect in the new rent control Act there is no basis for a conclusion that the Congress was intending to act under its war powers. The Act is not by any express words or implied provisions tied up with any war powers of the Congress. It gives, as one might say, the kiss of death to rent regulation but hangs on for a few months with an impotent embrace. The Act speaks of the existence of an emergency without any statement of what the emergency is. If Congress was intending to continue the exercise of war powers

residing within its constitutional prerogative, there are no words, and no fair implication may be found in the provisions of the Act, to support such intention. The Act of 1946 and earlier Acts were allowed to lapse. They were not amended or extended. Section 203 provides that the authority to fix maximum rents under the Emergency Price Control Act of 1942 was to be terminated on the effective date of the 1947 Rent Act. This is new legislation with no plausible constitutional basis for its validity. It has been stated that courts will take judicial notice of the fact that the war officially has not been terminated; but under the guise of an artificial judicial notice of an existing emergency not named, courts should not indulge in the deception of a fiction not supported by facts.

In recent years that have gone many thoughtful people have questioned the constitutional right of Congress to authorize local rent control. The great emergency of the war rather influenced patriotic people to submit to such regulation although believing that it was, even in wartime, beyond the reach of federal congressional or executive power. From the earliest times high legal authorities have held that the existence of a state of war did not nullify the provisions of the Constitution. How now can it be asserted that there is a single clause in the Federal Constitution, plausibly interpreted, that gives the government the right to regulate local rents in peacetime?

It has been confidently asserted that in peacetime there should be no emergency that the in-

telligent application of sound economic principles could not overcome within the framework of constitutional government. There is nothing in this law that stems from constitutional origin or power. The emergency created by housing shortage came into existence long before the war. It was not wholly due to war conditions, and property required by the government for low-cost housing with low rentals during the war was condemned and compensation paid the owner. What in effect, the Act of 1947 does is to provide low rentals for certain groups without taking the property or compensating the owner in any way. To impose federal restrictions upon the free use of the defendants' property is as effective a taking as to condemn it.

That the Congress was not relying upon war powers is evident from the fact, among others, that it provided for a termination of the Housing and Rent Act of 1947 without regard to the official termination of the war and also provided even that the Housing Expediter be "authorized and directed to remove any or all maximum rents before this title ceases to be in effect" if, in his judgment, the need for such controls no longer exists (Section 204 (c)). Thus it is left to the judgment of the Expediter, throughout the nation to determine when the emergency is over in respective localities. The Act in this respect lacks in uniformity of application and distinctly constitutes a delegation of legislative power not within the grant of Congress. Even the policy of Congress as expressed in the words of Section 201 of the Act, is inconsistent with an intention to

continue control and regulation until the official end of the war.

The right to control local affairs reserved to the states by the Constitution has been pretty much emasculated by the extension of Federal power. Certainly if the rights of the defendants, as guaranteed by the Constitution, are to be restored, such control and regulation must be terminated. If local rent control and regulation are to be continued until what are asserted to be the evil effects of the war shall have passed away, there is no hope of an early restoration of the constitutional rights of these defendants.

Doubts which earlier I entertained of the constitutional validity of the Housing and Rent Act of 1947, by examination and study have been crystallized into a conviction that it has no constitutional support in any provision of that instrument.

While it is true that the Act is to expire in a few months there is all the more reason for a speedy decision by the court and before the question becomes moot and of no benefit to those whose rights are at stake.

My considered judgment now is that the Act is without constitutional validity and that the plaintiff is not entitled to the relief demanded.

Accordingly, the preliminary injunction heretofore granted will be dissolved and the complaint dismissed.

(S) PAUL JONES,
United States District Judge.

NOVEMBER 20, 1947.

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